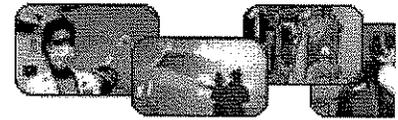


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Memorandums of Understanding

**Authority of Coast Guard and OSHA regarding enforcement of safety and health standards aboard vessels inspected and certified by the Coast Guard.**

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- **Information Date:** 03/04/1983
- **Agreement Agency:** United States Coast Guard U.S. Department of Transportation

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES COAST GUARD  
U.S. DEPARTMENT OF TRANSPORTATION  
AND THE  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
U.S. DEPARTMENT OF LABOR  
CONCERNING THEIR AUTHORITY TO  
PRESCRIBE AND ENFORCE STANDARDS OR REGULATIONS  
AFFECTING THE OCCUPATIONAL SAFETY AND HEALTH OF SEAMEN  
ABOARD VESSELS INSPECTED AND CERTIFICATED BY THE  
UNITED STATES COAST GUARD

PURPOSE.

It is the purpose of this memorandum of understanding (MOU) to set forth clearly the boundaries of the authority of the United States Coast Guard (Coast Guard) of the U.S. Department of Transportation and the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor in prescribing and enforcing standards or regulations affecting the occupational safety and health of seamen aboard vessels inspected and certificated by the Coast Guard (hereinafter "inspected vessels"). This MOU is intended to eliminate confusion among members of the public with regard to the relative authorities of the two agencies. Nothing in this MOU pertains to uninspected vessels. The Coast Guard and OSHA agree to work together to fulfill their respective authorities.

AUTHORITY OF THE COAST GUARD.

The Coast Guard is the dominant federal agency with the statutory authority to prescribe and enforce standards or regulations affecting the occupational safety and health of seamen aboard inspected vessels. Under the Vessel Inspection Laws of the United States, the Coast Guard has issued comprehensive standards and regulations concerning the working conditions of seamen aboard inspected vessels.

These comprehensive standards and regulations include extensive specific regulations

governing the working conditions of seamen aboard inspected vessels as well as ample general authority regulations to cover these seamen with respect to all other working conditions that are not addressed by the specific regulations. These standards and regulations are generally set forth at 46 C.F.R. Chapter 1, and in the Coast Guard's Marine Safety Manual and its Navigation and Vessel Inspection Circulars.

#### AUTHORITY OF OSHA.

OSHA has a general statutory authority to assure safe and healthful working conditions for working men and women under the Occupational Safety and Health (OSH) Act of 1970. Section 4(b)(1) of the OSH Act defines the relationship between OSHA and the other federal agencies whose exercise of statutory responsibilities may affect occupational safety and health. Based on OSHA's interpretation of section 4(b)(1), and as a result of the Coast Guard's exercise of its authority, described above, OSHA has concluded that it may not enforce the OSH Act with respect to the working conditions of seamen aboard inspected vessels. Nonetheless, OSHA retains the following responsibilities.

OSHA retains its authority under section 11(c) of the OSH Act, which forbids discrimination in any manner against employees who have exercised any right afforded them under the OSH Act. Pursuant to this provision, OSHA has the authority to require vessel owners to post a notice that informs employees of their right to complain about working conditions to the Coast Guard, OSHA, or the employer and to be free from retaliatory discrimination. OSHA has concluded that its exercise of authority under section 11(c) is not precluded by the scope of section 4(b)(1) of the OSH Act.

OSHA agrees to refer to the Coast Guard, for its consideration, any complaints, other than section 11(c) discrimination complaints, OSHA receives from seamen working aboard inspected vessels. However, the Coast Guard, consistent with the statement of its authority above, has the sole discretion to determine, under its applicable standards and regulations, whether the events complained of constitute hazardous conditions and the extent of any remedy that may be required.

#### RECORDKEEPING.

OSHA and the Coast Guard will continue to discuss the extent of their respective jurisdictions to require owners of inspected vessels to keep records concerning occupational injuries and illnesses. This MOU does not resolve any issues concerning recordkeeping obligations.

#### EFFECTIVE DATE AND PUBLICATION.

This MOU shall take effect upon signature by the parties. It shall be promptly published in the Federal Register.

Commandant  
United States Coast Guard  
U.S. Department of  
Transportation  
Date: March 8, 1983

Assistant Secretary for  
Occupational Safety and Health  
U.S. Department of Labor  
Date: March 4, 1983

Assistant Secretary for  
Occupational Safety and Health  
U.S. Department of Labor  
Date: March 4, 1983

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**Directives**

## CPL 2-1.20 - OSHA/U.S. Coast Guard Authority Over Vessels

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• <b>Record Type:</b>	Instruction
• <b>Directive Number:</b>	CPL 2-1.20
• <b>Title:</b>	OSHA/U.S. Coast Guard Authority Over Vessels
• <b>Information Date:</b>	11/08/1996

OSHA Instruction CPL 2-1.20 November 8, 1996 Directorate of Compliance Programs

SUBJECT: OSHA/U.S. Coast Guard Authority Over Vessels

**A. Purpose.** This instruction provides current policy, information and guidance with respect to OSHA/U.S. Coast Guard authority over inspected vessels, commercial uninspected fishing vessels, and commercial uninspected vessels in accordance with Section 4(b)(1) of the OSH Act, 29 U.S.C. Section 653(b)(1).

**B. Scope.** This instruction applies OSHA-wide.

### C. References.

1. OSHA Instruction STP 2.22A, CH-5, March 10, 1995, Changes to the State Plan Policies and Procedures Manual.
2. Memorandum of Understanding, U.S. Coast Guard and the Occupational Safety and Health Administration, 48 Federal Register 11366, March 17, 1983, effective date of March 8, 1983.
3. Public Law 100-424, enacted September 9, 1988, "Commercial Fishing Industry Vessel Safety Act of 1988," 46 U.S.C. 4501 et seq.
4. 46 CFR Part 28, "Commercial Fishing Industry Vessel Regulations," Final Rule.
5. 46 CFR Parts 24, 25, and 26 - "Uninspected Vessels."
6. Jones Act, 46 U.S.C. 688.
7. 46 CFR Part 197, Subpart B - "Commercial Diving Operations."
8. OSHA Instruction STD .2, November 4, 1985, Identification of General Industry Safety and Health Standards (29 CFR 1910) Applicable to Shipyard Work.

**R-347**

9. OSHA Instruction CPL 2-1.3B, June 14, 1982, Enforcement of Cargo Gear Regulations and the Requirements for Gear Certification in the Maritime Program.
10. 29 CFR 1926, Construction Industry Standards.
11. 29 CFR 1910, General Industry Standards.
12. Occupational Safety and Health Act (OSH Act) of 1970, Section 5(a)(1) General Duty Clause, and Section 4(b)(1) preemption of OSHA authority by other Federal or State agencies.
13. OSHA Instruction CPL 2.51 (Series), Exemptions and Limitations Under the Current Appropriations Act.

**D. Cancellation.** The following guidance documents addressing OSHA and U.S. Coast Guard authority and enforcement with respect to vessels are canceled:

1. Memorandum from Thomas J. Shepich, Directorate of Compliance Programs, April 5, 1989, "OSHA/U.S. Coast Guard Jurisdiction."
2. Memorandum from Gerald P. Reidy, Office of Construction and Maritime Compliance Assistance, to Region X, November 1, 1990, "OSHA/U.S. Coast Guard Jurisdiction; Commercial Fishing Industry Vessels."
3. Memorandum from Gerald P. Reidy, Office of Construction and Maritime Compliance Assistance, to Region X, January 18, 1991, "OSHA/U.S. Coast Guard Jurisdiction, Commercial Fishing Vessels."
4. Memorandum from Patricia K. Clark, Directorate of Compliance Programs, to Region X, July 6, 1990, "OSHA/ U.S. Coast Guard Jurisdiction; Commercial Fishing Industry Vessels."

**E. Action.** OSHA Regional Administrators and Area Directors shall use the guidelines and procedures set forth in this instruction to determine OSHA's authority with respect to the enforcement of occupational safety and health violations on vessels.

**F. Federal Program Change.** This instruction describes a Federal Program Change which affects State plan coverage of public sector employees engaged in maritime employment and those States whose programs also cover portions of the private sector maritime issue. States which cover private sector maritime employment and/or have public sector employees engaged in maritime operations are encouraged to follow the guidelines and jurisdictional limitations established by this instruction within the context of applicable State law, i.e., comparable to Section 4(b)(1) of the OSH Act.

1. The Regional Administrator shall ensure that this change is promptly forwarded to each State designee, using a format consistent with the Plan Change Two-Way Memorandum in Appendix P of the State Plan Policies and Procedures Manual (reference C.1., OSHA Instruction STP 2.22A).
2. The Regional Administrator shall explain to each State designee, as requested, the

technical content of this change.

3. States which cover private sector maritime employment and/or have public sector employees engaged in maritime operations shall be asked to provide preliminary notification to the Regional Administrator within 30 days from the date of this instruction of their intent to adopt an identical or equivalent policy or not to adopt such jurisdictional limitations based on interpretations of differing provisions of State law.

**G. Background.** The delineation of OSHA and the U.S. Coast Guard authority over **inspected vessels** has been unchanged since the signing of a Memorandum of Understanding (reference C.2.) in 1983. The Coast Guard has statutory authority to prescribe and enforce regulations affecting the safety and health of seamen on board vessels inspected and certificated by the agency, and has issued comprehensive standards for working conditions on inspected vessels. Therefore, OSHA may not enforce the OSH Act with respect to "seamen" on inspected vessels including the master, ship's officers and crew members.

The extent of the Coast Guard preemption of OSHA authority over **commercial uninspected fishing vessels** underwent significant changes in 1991. In response to Public Law 100-424 (reference C.3.), the U.S. Coast Guard developed and issued specific regulations (reference C.4.) for commercial uninspected fishing, fish processing, and fish tender vessels to improve the overall safety and health working conditions of **commercial fishing industry vessels**.

OSHA authority over **commercial uninspected vessels** (other than uninspected fishing vessels) remains unchanged. The U.S. Coast Guard has published applicable regulations for uninspected vessels (See reference C.5.).

Due to the complexity of determining the extent to which the Coast Guard preempts OSHA authority over inspected vessels, uninspected fishing vessels, and uninspected vessels, additional clarification of OSHA and U.S. Coast Guard authority and enforcement activities on vessels is provided herein.

**H. Definitions.** Since most definitions related to this instruction are derived from longstanding U.S. Coast Guard rules, where applicable the pertinent U.S. Coast Guard reference is provided within brackets. The following definitions are applicable to this instruction.

1. **Barge** means a non-self propelled vessel. [46 USC Section 2101(2)]
2. **Boundary Line** means a line of demarkation established under Section 2(b) of 33 U.S.C. 151. Generally, boundary lines follow the general trend of the shoreline and cross entrances to small bays, inlets and rivers. For specific descriptions of boundary lines refer to 46 CFR Part 7.
3. **Certificate of Inspection** means a U.S. Coast Guard document issued to United States vessels inspected by the U.S. Coast Guard and which contains, among other information: the description of the vessel, the route the vessel may travel, the minimum crew requirements, the safety equipment and appliances required to be on board, the total number of persons that may be carried, and the names of the owners and operators. [46 USC Section 3309]

4. **Commercial Fishing Industry Vessel** means a fishing vessel, fish tender vessel, or a fish processing vessel which is licensed or registered to engage in commercial fishing industry operations. [46 CFR Section 28.50]

5. **Fish** means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds. [46 USC Section 2101(11)]

6. **Fish Processing Vessel** is a U.S. Coast Guard **classification for a vessel** that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling. [46 USC Section 2101(11b)]

7. **Fish Processing**, as defined by OSHA, is a production function which involves any preparation of a fish or fish product by a worker including gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling. It is important to note that the definition of fish processing, as defined by OSHA, is predicated on worker function and, therefore, may occur on vessels other than a U.S. Coast Guard classified "Fish Processing Vessel" (e.g.; "Fish Tender Vessel", "Fishing Vessel").

8. **Fish Tender Vessel** is a U.S. Coast Guard **classification for a vessel** that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility. [46 USC Section 2101(11b)]

9. **Fishing Vessel** is a U.S. Coast Guard **classification for a vessel** that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish. [46 USC Section 2101(11a)]

10. **Inspected Vessel** means a vessel subject to inspection by the U.S. Coast Guard under 46 U.S.C. 3301 and which is issued a Certificate of Inspection (COI) by the Coast Guard.

11. **Navigable Waters** includes all rivers, tributaries, lakes, bays, and sounds which in their natural and ordinary condition are accessible to and from the high seas by vessels. The U.S. Coast Guard is the agency responsible for making any determination of whether a body of water is considered to be "Navigable Waters."

12. **Seaman** is an individual engaged or employed in any capacity on board a vessel, and who has a more or less permanent connection with a vessel, and who contributes to the function of the vessel or to the accomplishment of its mission. [46 USC Section 10101(3)]

13. **Uninspected Vessel** means a vessel not subject to inspection under 46 USC Section 3301 and not a recreational vessel under 46 USC Section 2101(43). A vessel classified as an "uninspected vessel" by the U.S. Coast Guard is subject to limited Coast Guard inspection of the following areas only: safety check of basic fire fighting equipment, safety check of approved life jackets and lifesaving equipment, ventilation of engine bilges and fuel tank compartments, and backfire traps/flame arresters on inboard engine carburetors using gasoline as a fuel.

**I. Geographical Considerations for All Vessels.** The authority of OSHA over any vessel is limited to employment performed within a jurisdiction covered by the OSH Act (See Section 4(a), 29 U.S.C. 653(a)). This provision, as modified by later international agreements, states that the OSH Act applies to employment performed in a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Northern Mariana Islands, Wake Island, Johnston Island, and the Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act. For the purposes of this instruction, the term "State" means each of the jurisdictions previously mentioned, except the Outer Continental Shelf Lands. OSHA only has authority over vessels when they are operating within the limits of State territorial waters.

1. For coastal States, the State territorial waters extend 3 nautical miles seaward from the coast line, except for the Gulf Coast of Florida, Texas and Puerto Rico where the territorial waters extend for 3 marine leagues (approximately 9 nautical miles). "Coast line" is defined as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

2. For States bordering the Great Lakes and St. Lawrence River, all waters in the Great Lakes and associated rivers up to the international boundary line with Canada are State territorial waters.

**J. Authority Over Inspected Vessels.** The U.S. Coast Guard exercises full authority over the safety and health of seamen on board vessels which are inspected and certificated by the U.S. Coast Guard; i.e., "inspected" vessels. With respect to inspected vessels, OSHA refers all safety and health complaints regarding the working conditions of seamen to the U.S. Coast Guard for its consideration to determine whether the events complained of constitute hazardous conditions. OSHA retains authority with respect to recordkeeping requirements for seamen on inspected vessels.

1. OSHA may exercise authority over the working conditions of employees, other than seamen, who are exposed to occupational hazards while working on inspected vessels. This includes employees engaged in longshoring operations, and employees engaged in shipbuilding, ship repair, or shipbreaking operations. This authority also includes other employees, such as construction workers (e.g., those on pipe-laying barges) who are not permanent members of the vessel. However, with respect to employees who are not seamen, OSHA may not cite an owner, operator or master of an inspected vessel for hazards specifically addressed by Coast Guard regulations.

2. The following guidance is provided with respect to making a determination as to whether a worker is a "seaman". A seaman is an employee who:

a. Is engaged or employed in any capacity on board a vessel and has a more or less permanent connection with the vessel, and

b. Contributes to the function of the vessel or to the accomplishment of its mission. To be a seaman one need not aid in navigation or contribute to the transportation of the vessel, but one must do the ship's work. Land-based maritime workers are not seamen (e.g., shipyard employees, longshoremen).

3. In making a determination of whether an individual or group of individuals would be classified as a "seaman", the vessel's "Certificate of Inspection" (COI) should be reviewed since it will provide relevant information on the crew. However, this document is not absolutely determinative.

4. The COI may specifically indicate crew member billets which would, thereby, classify members of the officer rating by a license, and seamen by the issuance of a Merchant Mariners Documents. This is commonly referred to as a "MMD" (Merchant Mariners Document) or "Z-Card" (identification number starts with the letter Z). However, other individuals may be seamen if they meet the above noted two-part test. (See J.2.a. and b.) Any individual who can be determined to be subject to the Jones Act (reference C.6.), would be classified as a "seaman". Local U.S. Coast Guard offices and staff are willing and helpful in those situations where it is difficult to determine whether an individual or group of individuals would be defined as a "seaman." In situations where a dispute or disagreement arises, or a question remains, the OSHA National Office, Office of General Industry Compliance Assistance (Maritime Division), shall be contacted through the respective OSHA Regional Office before any violation is cited.

**K. U.S. Coast Guard Inspected Vessel Regulations.** The U.S. Coast Guard regulates safety and health working conditions for seamen on inspected vessels through the issuance of standards which are contained in 46 CFR Chapter I. The enforcement of the U.S. Coast Guard requirements is set forth in their Marine Safety Manual and Navigation and Vessel Inspection Circulars. The U.S. Coast Guard also regulates commercial diving conducted from inspected vessels per 46 CFR Part 197, Subpart B regulations. (See reference C.7.)

1. The types of inspected vessels are set forth in 46 U.S.C. 3301. They are freight vessels, nautical school vessels, off-shore supply vessels, passenger vessels, sailing school vessels, seagoing barges, seagoing motor vessels, small passenger vessels, steam vessels, tank vessels, fish processing vessels of more than 5,000 gross tons, and fish tender vessels of more than 500 gross tons.

2. Inspected vessels must carry a valid "Certificate of Inspection" issued by the U.S. Coast Guard.

**L. OSHA Requirements Enforceable on Inspected Vessels.** OSHA may exercise its authority to cite employers (other than the owners, operators, agents or masters of inspected vessels **employing only "seamen"**) for all violative working conditions on a vessel when such violations occur within OSHA's geographical jurisdiction. Primarily these employers are those who employ longshoremen and workers engaged in ship repairing, shipbuilding, and shipbreaking.

1. An owner, operator, agent or master of an inspected vessel may be cited for hazards to which non-seamen it employs are exposed if the hazard is not specifically subject to a particular regulation of the U.S. Coast Guard. The reporting of accidents by employers to OSHA is required for all situations where OSHA has geographical jurisdiction in accordance with 29 CFR Section 1904.8.

2. OSHA requirements which remain enforceable on inspected vessels for **employees other than seamen** are as follows:

- a. 29 CFR 1915 for ship repair, shipbuilding and shipbreaking (including applicable 29 CFR 1910 requirements. (See reference C.8.)
- b. 29 CFR 1918 for long shoring operations.
- c. 29 CFR 1919 for cargo handling operations as referenced under 29 CFR 1918 longshoring requirements. (See reference C.9.)
- d. 29 CFR 1926 for marine construction activities. (See reference C.10.)
- e. 29 CFR 1910 for general working conditions not otherwise regulated. (See reference C.11.)
- f. Identified recognized hazardous situations that are causing or are likely to cause death or serious physical harm for which there are no specific OSHA or U.S. Coast Guard standards will be cited under the provisions of Section 5(a)(1) of the Occupational Safety and Health Act (OSH Act). (See reference C.12.)

NOTE 1: Situations will occur where the employee is covered by OSHA, but the vessel hazard is regulated by the U.S. Coast Guard. A common example is the height of guardrails--OSHA requires 42 inches, but the U.S. Coast Guard allows various heights not specifically allowed in the OSHA standards. In such cases involving hardware design specifications, OSHA compliance officers shall not cite the employer for the condition if it complies with the Coast Guard requirements. However, if a longshoring employee were exposed to a fall into a hatch because an installed guard-rail or lifeline was missing or had been taken down, then OSHA compliance officers shall cite the violation.

NOTE 2: Inspected vessels in an immobile status which have been determined to be substantially a land structure are issued a "Certificate of Permanently Moored" by the Army Corps of Engineers and, thereby, lose status as a vessel (i.e., prior U.S. Coast Guard COI is invalid). A "Certificate of Permanently Moored" may include prior vessels being used as a theater, hotel, restaurant, museum, factory, etc. OSHA may exercise its authority to cite employers for all violative working conditions on such prior vessels. If there is any question, call the National Office, Office of General Industry Compliance Assistance (Maritime Division) for guidance.

NOTE 3: Inspected vessels used as gambling boats, tour boats and similar vessels are subject to the 1983 MOU between the Coast Guard and OSHA (reference C.2.). If the worker is determined to be a "seaman" per paragraph J. of this instruction, then the U.S. Coast Guard regulates the working conditions.

**M. OSHA Authority Over Commercial Uninspected Fishing Vessels.** Authority over commercial uninspected fishing vessels is shared by the U.S. Coast Guard and OSHA, with the Coast Guard being the lead agency. OSHA is precluded under Section 4(b)(1) of the OSH Act (reference C.12.) from enforcement with respect to working conditions regulated by other Federal agencies. Therefore, the promulgation of 46 CFR Part 28 (reference C.4.) by the U.S. Coast Guard has expanded the extent of the Coast Guard's regulations over "commercial" uninspected fishing vessels, and preempts OSHA with respect to those working conditions specifically addressed by Coast Guard regulations.

1. OSHA will continue to regulate working conditions on uninspected fishing vessels that are not otherwise covered by U.S. Coast Guard standards, within the geographical limits specified in section I for the protection of all employees including seamen. A list of enforceable OSHA requirements is provided in Appendix A of this instruction.

2. Pursuant to 29 C.F.R. 1910.6(a)(3), OSHA deems it necessary to assure the presence of Coast Guard personnel during OSHA inspections of fishing vessels, as a general rule. Therefore, when practical and feasible, the OSHA Area Director will advise the Coast Guard in advance of inspections to be conducted aboard fishing vessels, and OSHA compliance officers will allow U.S. Coast Guard personnel to accompany them at the option of the Coast Guard.

a. OSHA shall advise the Coast Guard on a case-by-case basis of OSHA's requirement that vessel owners and employers are not given advance notice of the inspection.

b. Specific occupational hazards noted by OSHA compliance officers which are addressed by U.S. Coast Guard regulations will be referred to the local U.S. Coast Guard District Office in writing through the use of the OSHA 90 Form with a cover letter. This procedure will allow Integrated Management Information System queries to be conducted on referrals submitted to the U.S. Coast Guard by OSHA. Otherwise, the violations will be cited by OSHA compliance officers under OSHA procedures and regulations.

3. Pursuant to appropriations limitations, OSHA is currently precluded from conducting "programmed" safety inspections of worksites in the fishing industry with 10 or fewer employees. Field personnel are reminded to review OSHA Instruction CPL 2.51 (reference C.13.) for any applicable limitations placed on OSHA activities by the Congress in the law providing appropriations for the Department of Labor.

**N. U.S. Coast Guard Commercial Uninspected Fishing Vessel Regulations.** The U.S. Coast Guard regulations for commercial "uninspected" fishing vessels (reference C.4.) are applicable to fish processors up to 5,000 gross tons, fish tenders up to and including 500 gross tons, and all commercial fishing vessels. Fish processors and fish tenders which exceed these limits are "inspected" vessels. Currently, there is only one known vessel (fish processor) which exceeds these limits. The U.S. Coast Guard regulations are primarily performance-oriented requirements. Applicable U.S. Coast Guard regulations in force, which preempt OSHA for commercial uninspected fishing vessels, can be found in Appendix B.

**O. OSHA Requirements Enforceable on Commercial Uninspected Fishing Vessels.** OSHA may exercise its authority to cite employers using commercial uninspected fishing

vessels for all violative working conditions on a vessel when such violations occur within OSHA's geographical jurisdiction, and when such violations are not specifically addressed by Coast Guard vessels. Primarily these employers are those who employ fishing industry employees (e.g., processing line workers), longshoremen and workers engaged in ship repairing, shipbuilding, and shipbreaking.

1. An owner, operator, agent or master of an uninspected fishing vessel may be cited for hazards to which **any employee, including seamen**, are exposed if the hazard is not regulated by the U.S. Coast Guard.

a. OSHA compliance officers will ensure compliance with 29 CFR 1910 standards except for ship repair, shipbuilding, and shipbreaking where 29 CFR 1915 standards apply; and cargo handling operations where 29 CFR 1918 standards apply.

b. Identified recognized hazardous situations that are causing or are likely to cause death or serious physical harm for which there are no specific OSHA or U.S. Coast Guard standards will be cited under Section 5(a)(1) of the OSH Act. (See reference C.12.)

c. The reporting of accidents by employers to OSHA is required for all situations where OSHA has geographical jurisdiction over the working condition(s). (See Appendix A for specific conditions that continue to be subject to OSHA enforcement.)

**P. Authority Over Commercial Uninspected Vessels (Other than Commercial Fishing Vessels).** The U.S. Coast Guard conducts limited safety checks on "uninspected vessels." The Coast Guard has regulations dealing with, and conducts safety checks of, working conditions on commercial uninspected vessels involving personal flotation devices, lifesaving equipment, fire extinguishing equipment, fire fighting equipment, ventilation of engine bilges and fuel tank compartments, and back-fire traps/flame arresters on inboard engine carburetors using gasoline as a fuel. Any other working condition on board a commercial uninspected vessel is subject to OSHA authority.

1. U.S. Coast Guard regulations for uninspected vessels are **not applicable** to:

a. Any vessel operating exclusively on inland waters which are not navigable waters. The nearest U.S. Coast Guard Marine Safety Office will provide a determination of navigable inland waters upon request. Any waters from which a vessel cannot access the high seas would generally not be considered navigable waters (e.g., a land locked lake, or a river/lake up-stream of a dam).

b. Any vessel while laid up and dismantled and out of commission.

c. Any vessel with title vested in the United States which is used for public purposes, except vessels of the U.S. Maritime Administration.

2. Towing vessels and tugboats are not listed by the U.S. Coast Guard as "Vessels Subject to Inspection" and are, therefore, uninspected vessels. The two exceptions are **steam powered** towing vessels and tugboats, and **seagoing** towing vessels and

tugboats **over 300 gross tons** which operate beyond the Boundary Line and, thus, are inspected vessels.

NOTE: If the vessel always operates within U.S. inland waters then it is not required to be inspected.

**Q. U.S. Coast Guard Uninspected Vessels (Other than Commercial Fishing Vessels) Regulations.** U.S. Coast Guard uninspected vessel regulations (reference C.5.) provide clarification of the extent of U.S. Coast Guard authority and enforcement in this area. Applicable U.S. Coast Guard regulations in force which preempt OSHA on uninspected vessels are summarized in Appendix C.

NOTE: U.S. Coast Guard regulations (reference C.5.) shall be reviewed prior to conducting inspections of uninspected vessels and prior to the issuance of citations for violations.

**R. OSHA Requirements Enforceable on Uninspected Vessels (Other than Commercial Fishing Vessels).** OSHA may exercise its authority to cite all employers for all violative working conditions affecting their employees on uninspected vessels when such violations occur within OSHA's geographical jurisdiction and when such violations are not specifically addressed by a Coast Guard regulation.

1. An owner, operator, agent or master of an uninspected vessel may be cited for hazards to which **any employees, including seamen**, it employs are exposed if the hazard is not regulated by the U.S. Coast Guard.

a. OSHA compliance officers will ensure compliance with 29 CFR 1910 standards except for ship repair, shipbuilding, and shipbreaking where 29 CFR 1915 standards apply; longshoring and cargo handling operations where 29 CFR 1918 and 1919 standards apply; and marine construction activities where 29 CFR 1926 standards apply.

b. Identified recognized hazardous situations that are causing or are likely to cause death or serious physical harm for which there are no specific standards will be cited under the provisions of Section 5(a)(1) of the OH Act. (See reference C.12.)

c. A list of the hazards regulated onboard uninspected vessels by the Coast Guard is provided in Appendix C of this instruction.

2. The reporting of accidents by employers to OSHA is required for all situations where OSHA has geographical jurisdiction.

Joseph A. Dear Assistant Secretary

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#### Appendix A

SPECIFIC CONDITIONS ON UNINSPECTED FISHING VESSELS  
SUBJECT TO OSHA ENFORCEMENT

1. Onboard cranes and their maintenance and use. [29 CFR 1910 Subpart N; 29 CFR 1915 Subpart G; 29 CFR 1918 Subpart B, F, G, and H]

NOTE: Cranes used to support ship repair or longshoring operations (i.e., the transfer of cargo to or from a vessel) require certification by a recognized Federal OSHA agency accredited under 29 CFR 1919.

2. Chains, hooks, and slings. [29 CFR 1910 Subpart N; 29 CFR 1915 Subpart G; 29 CFR 1918 Subparts F, G and H]

3. Ropes (wire, manila, and synthetic). [29 CFR 1910 Subpart N; 29 CFR 1915 Subpart G; 29 CFR 1918 Subpart G]

4. Powered vehicles on board. [29 CFR 1910.178; 29 CFR 1918.73]

5. Maintenance and repair (painting, lockout/tagout, deck holes). [29 CFR 1915 Subparts B, C and E]

6. Open-sided floors and platforms. [29 CFR 1910 Subpart D; 29 CFR 1915 Subpart E; 29 CFR 1918 Subpart D]

7. Tools and portable equipment. [29 CFR 1910 Subpart P; 29 CFR 1915 Subpart H]

8. Warning signs and labeling of control switches. [29 CFR 1910.147 and .335; 29 CFR 1915 Subpart J]

9. Temporary cords (use, maintenance, and material construction). [Public Law 91-596 Section 5(a)(1), 29 CFR 1915.92]

10. Exposed electrical wiring related to factory processing equipment. [Public Law 91-596 Section 5(a)(1)]

11. Steam hose use and fittings. [29 CFR 1915.93]

12. Working around radar and other emission devices. [29 CFR 1915.95]

13. Illumination of work areas and accommodation spaces. [29 CFR 1915.92]

14. Washing, bathing, toilet, and clothes washing facilities. [29 CFR 1910.141]

15. Noise. [29 CFR 1910.95]

16. Elevators and dumbwaiters. [29 CFR 1910.212]

NOTE: For vessels classified by the Coast Guard as a "Fish Processing Vessel" hazardous conditions of elevators and dumbwaiters which are identified by OSHA are referred to the Coast Guard for appropriate action.

17. Vessel access (gangways). [29 CFR 1915 Subpart E, 29 CFR 1918 Subpart C]
18. Gas cylinder storage (use and compatibility). [29 CFR 1910 Subpart H, 29 CFR 1915.55]
19. Sources of ignition, including smoking (e.g., tobacco). [29 CFR 1915 Subpart B]
20. Testing of oxygen-deficient atmospheres. [29 CFR 1915, Subpart B]
21. Cutting and welding permits, testing prior to work, and competent persons in these areas. [29 CFR 1915, Subpart B]
22. Confined spaces. [29 CFR 1915, Subpart B]
23. Personal protective equipment, except lifesaving equipment, life preservers, immersion suits, exposure suits, other personal flotation devices; and on 46 CFR Part 28, Subparts C and D vessels, equipment dealing with refrigerant ammonia and the protection of firefighters. [29 CFR 1910 Subpart I; 29 CFR 1915 Subpart I; 29 CFR 1918 Subpart J]
24. Gas masks and canisters, except equipment dealing with ammonia used as a refrigerant; and on 46 CFR Part 28, Subparts C and D vessels, equipment for firefighters. [29 CFR 1910.134; 29 CFR 1915.152]
25. Respiratory protective programs and respirator checks, except ammonia used as a refrigerant; and on 46 CFR Part 28, Subparts C and D vessels, equipment for firefighters. [29 CFR 1910.134; 29 CFR 1915.152]
26. Asbestos and other chemical exposures, except refrigerant ammonia on 46 CFR Part 28, Subparts C and D vessels. [29 CFR 1910 Subpart Z; 29 CFR 1915 Subpart Z]
27. Materials handling and storage. [29 CFR 1910 Subpart N; 29 CFR 1915 Subpart G; 29 CFR 1918 Subpart H]
28. Hazard communication. [29 CFR 1910.1200, 29 CFR 1915.1200]
29. Bloodborne pathogens. [29 CFR 1910.1030, 29 CFR 1915.1030]
30. Emergency response and spill clean up. [29 CFR 1910.120]
31. Reporting of accidents and fatalities. [29 CFR 1904]

NOTE: Section 4(b)(1) of the OSH Act does not apply to reporting; therefore, OSHA and the U.S. Coast Guard may enforce their own rules. Accidents and fatalities which occur within OSHA's geographical jurisdiction are required to be reported to OSHA in accordance with 29 CFR 1910.8.

32. Recording of illnesses and injuries. [29 CFR 1904]

NOTE: Section 4(b)(1) of the OSH Act does not apply to recordkeeping; therefore, OSHA and the U.S. Coast Guard may enforce their own rules.

**APPENDIX B**

**APPLICABLE U.S. COAST GUARD REGULATIONS FOR  
COMMERCIAL UNINSPECTED FISHING VESSELS**

1. U.S. Coast Guard requirements which apply to all commercial uninspected fishing vessels (46 CFR Part 28, Subpart B). (See reference C.4.)

a. General lifesaving equipment.

- (1) Personal floatation device (PFD) and immersion suits. [46 CFR 28.110]
- (2) Ring life buoys. [46 CFR 28.115]
- (3) Survival craft. [46 CFR 28.120]
- (4) Stowage of survival craft. [46 CFR 28.125]
- (5) Lifesaving equipment markings. [46 CFR 28.135]
- (6) Readiness, maintenance and inspection of lifesaving equipment. [46 CFR 28.145]

b. Distress signals. [46 CFR 28.145]

c. Emergency Position Indicating Radar Beacons (EPIRBs). [46 CFR 28.150, 46 CFR 25.26].

d. Excess fire detection and protection equipment. [46 CFR 28.155].

e. Portable fire extinguishers. [46 CFR 28.155].

f. Injury placard. [46 CFR 28.165]

g. Casualty reporting. [46 CFR 4.05]

h. Injury reporting. [46 CFR 4.05]

2. Additional U.S. Coast Guard requirements which apply to documented commercial fishing vessels that operate beyond the Boundary Lines or with 16 or more individuals on board (reference C.4., Subpart C):

a. Fireman's outfit and self-contained breathing apparatus (SCBA). Each vessel with 49 or more passengers onboard must have two such outfits. Each vessel that uses ammonia as a refrigerant must have two SCBAs, each with a spare bottle. [46 CFR 28.205]

b. First aid equipment and training. [46 CFR 28.215]

c. Guards for exposed hazards (including machine guarding). This includes, but is not limited to, factory processing equipment on fish processing vessels. [46 CFR 28.215]

(1) Each space on board a vessel must meet the requirements of this section.

(2) Suitable hand covers, guards, or railing must be installed in way of machinery which can cause injury to personnel, such as gearing, chain or belt drives, and rotating shafting. This is not meant to restrict necessary access to fishing equipment such as winches, drums or gurdies.

(3) Each exhaust pipe from an internal combustion engine which is within reach of personnel must be insulated or otherwise guarded to prevent burns.

d. Navigational information. [46 CFR 28.225]

e. Compass with deviation table. [46 CFR 28.230]

f. Anchors and radar reflectors. [46 CFR 28.235]

g. General alarm system. [46 CFR 28.240]

h. Communication equipment. [46 CFR 28.245]

i. High water alarms. [46 CFR 28.250]

j. Bilge pumps, bilge piping, and dewatering systems. [46 CFR 28.250 and .255]

k. Electronic position fixing devices. [46 CFR 28.260]

l. Emergency instructions, training, drills and safety orientation. [46 CFR 28.265 and .270]

(1) Abandoning the vessel, fighting fires, recovering an individual from the water, minimizing the effects of unintentional flooding, launching survival craft, recovering lifeboats and rescue boats;

(2) Donning a fireman's outfit and a SCBA, making a voice radio distress call and using visual distress signals, activating the general alarm and reporting inoperative alarm systems and fire detection system; and

(3) Drills, and vessel safety orientation.

3. In addition to the aforementioned regulations, commercial fishing vessels which have had their keel laid or are at a similar stage of construction or which undergo a major conversion completed on or after September 15, 1991, and that operate with more than 16 individuals on board must comply with the following U.S. Coast Guard requirements (reference C.4., Subpart D):

a. Lifesaving/Deck Equipment.

- (1) Lifesaving and signaling equipment. [46 CFR 28.305]
- (2) Launching survival craft. [46 CFR 28.310]
- (3) Means of escape. [46 CFR 28.390]
- (4) Embarkation stations. [46 CFR 28.395]
- (5) Radar & depth sounding devices. [46 CFR 28.400]
- (6) Deck rails, lifelines, storm rails and hand grabs. [46 CFR 28.410]

b. Fire Fighting/Engineering Equipment.

- (1) Fire pumps, mains, hydrants and hoses. [46 CFR 28.315]
- (2) Fixed gas fire extinguishing systems. [46 CFR 28.320]
- (3) Fire detection systems. [46 CFR 28.335]
- (4) Galley hood and other fire protection equipment. [46 CFR 28.330]
- (5) Fuel systems. [46 CFR 28.335]
- (6) Ventilation of enclosed engine and fuel tank spaces. [46 CFR 28.340]
- (7) Electrical standard for vessels greater than 79 feet in length. [46 CFR 28.345]
- (8) General requirements for electrical systems. [46 CFR 28.350]
- (9) Main source of electrical power. [46 CFR 28.355]
- (10) Electrical distribution systems. [46 CFR 360]
- (11) Overcurrent protection and switched circuits. [46 CFR 28.365]
- (12) Wiring methods and materials. [46 CFR 28.370]
- (13) Emergency source of electrical power. [46 CFR 28.375]
- (14) General structural fire protection. [46 CFR 28.380]
- (15) Structural fire protection for vessels with more than 49 individuals on board. [46 CFR 28.385]
- (16) Hydraulic equipment. [46 CFR 28.405]

4. Stability requirements which apply to documented commercial fishing industry vessels greater than 79 feet (See reference C.4., Subpart E).

5. Requirements which apply to fish processing vessels (See reference C.4., Subpart F).
6. Requirements which apply to fish tender vessels engaged in the Aleutian Trade Act (See reference C.4., Subpart G).

## APPENDIX C

### U.S. COAST GUARD REGULATIONS FOR UNINSPECTED VESSELS

1. Personal Flotation Devices (PFD) and Other Lifesaving Equipment [46 CFR 25.25].
  - a. An approved and readily available PFD is required to be on board the vessel for each individual on board. An exposure suit is considered to be an acceptable substitute for a PFD. **All lifesaving equipment designed to be worn is required to be readily available and in serviceable condition.**
  - b. Each vessel 26 feet or longer must have at least one approved ring life buoy which is immediately available. **All lifesaving equipment designed to be thrown into the water is required to be immediately available and in serviceable condition.**
  - c. An approved commercial hybrid PFD is acceptable if worn when the vessel is underway and the intended wearer is not within an enclosed space; labeled for use on uninspected commercial vessels; and used as marked and in accordance with the owner's manual.
  - d. An approved light is required for all PFDs and exposure suits. Also, all PFDs must have approved retro-reflective material installed.
2. Fire Extinguishing Equipment [46 CFR 25.30].
  - a. Hand-portable fire extinguishers and semi-portable fire extinguishing systems must be of the "B" type (i.e.; suitable for extinguishing fires involving flammable liquids, greases, etc.).
  - b. Hand-portable fire extinguishers and semi-portable fire extinguishing systems must have a plate listing the name of the item, rated capacity (gallons, quarts or pounds), name and address of person/firm for whom approved, and manufacturer's identifying mark.
  - c. Portable fire extinguishers must be inspected and weighed every 6 months.
  - d. Minimum number of B-II hand portable fire extinguishers required to be on board motor vessels: one if less than 50 tons, two if 50-100 tons, three if 100-500 tons, six if 500-1000 tons, and eight if over 1000 tons.
  - e. Fixed fire extinguishing systems must be an approved carbon dioxide type and must meet the U.S. Coast Guard requirements. (See reference C.5., Part 25.30-15.)

3. Backfire Flame Control [46 CFR 25.35].

Every gasoline engine installed after April 25, 1940, except outboard motors, must be equipped with an acceptable means of backfire flame control.

4. Ventilation of Tanks and Engine Spaces [46 CFR 25.40].

Fuel tanks and engine spaces, using fuel with a flashpoint of 110 degrees Fahrenheit or less, must be provided with adequate ventilation to remove explosive or flammable gases from the fuel tank compartment or bilges.

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Occupational Safety & Health Administration  
200 Constitution Avenue, NW  
Washington, DC 20210



## CHAPTER 8. OUTER CONTINENTAL SHELF (OCS) INVESTIGATIONS

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### **A. Introduction.**

The regulations for OCS investigations are found in 33 CFR 140.201 through .205. Section 22 of the Outer Continental Shelf Lands Act Amendments (OCSLAA) (43 U.S.C. 1348) requires investigation of every death, serious injury, major fire, pollution incident, and alleged violation of safety regulations issued pursuant to the OCSLAA that occurs as a result of activities on the OCS (including foreign activities). Subpoena power is available to aid such investigations. Under the direction of the officer in charge, marine inspection (OCMI), investigating officers (I.O.'s) shall investigate the following incidents that occur as a result of OCS activities:

1. Deaths;
2. Injuries resulting in substantial impairment of any bodily unit or function;
3. Fire that causes death, injury, or property damage exceeding \$25,000;
4. Oil spillage exceeding 200 barrels (bbl.) in 1 occurrence during any 30day period; and
5. Any other injuries, casualties, accidents, complaints of unsafe working conditions, fires, pollution, and incidents resulting from OCS activities, as the OCMI deems appropriate to promote the safety of life, property, or the marine environment.

### **B. Investigative Guidelines.**

Insofar as practicable, OCS investigations shall be conducted pursuant to the procedures outlined in 46 CFR 4. Representatives of the U.S. Department of the Interior (DOI) Minerals Management Service (MMS) may participate in OCS investigations. Such participation includes, but is not limited to the following:

1. Participating in a joint onscene investigation;
2. Making recommendations concerning the scope of the investigation;
3. Calling and examining witnesses; and
4. Submitting and requesting additional evidence.

Reports of investigations conducted under 33 CFR, Subpart C shall be made available to parties to the investigation and the public upon completion of agency action. In such investigations, the I.O. shall have the power to administer necessary oaths, subpoena witnesses, and require the production of books, logs, documents, and other forms of evidence. Attendance of witnesses or the production of real evidence shall be compelled by a process similar to that used in the district courts of the U.S.

### **C. Relations With The Minerals Management Service (MMS).**

1. Agency Responsibilities. To avoid duplicative efforts and to simplify administrative procedures, the primary agency regulating a particular facility, system, or operation shall be responsible for leading the investigation and for reporting on incidents involving that facility, system, or operation. Where only one agency has an investigative interest in an incident, that agency will investigate and report. Where both the Coast Guard and MMS have investigative interest, one will assume the lead role while the other provides supporting participation (see Volume X of this manual for the memorandum of understanding (MOU) between the Coast Guard and MMS dated 18 December 1980). Assumption of lead agency responsibility, the extent of supporting participation, and procedures for coordination will be determined by the circumstances of the incident. Normally, all investigations that involve both agencies will be coordinated by applying the following guidelines:

a. Collisions. The Coast Guard is the lead agency.

b. Fires And Explosions. MMS is the lead agency for all fires and explosions that involve drilling or production operations. Coast Guard participation will be requested in all investigations of fires and explosions involving deaths, injuries, and vessels, equipment, or operations for which the Coast Guard is responsible.

c. Deaths And Injuries. The Coast Guard is the lead agency. MMS participation will be requested in all investigations of deaths and injuries associated with oil or gas drilling or production operations or equipment, including exposure to hydrogen sulfide.

d. Pollution Incidents. MMS is the lead agency. Coast Guard participation will be requested in all pollution investigations.

e. Facilities, Equipment, And Materials.

(1) The Coast Guard will normally be the lead agency for incidents involving damage to mobile offshore drilling units (MODU's), mobile well servicing units (MWSU's), or other vessels, or floating OCS facilities, and failure of or damage to propulsion, auxiliary, or emergency systems and equipment for which the Coast Guard establishes requirements; and

(2) MMS will normally be the lead agency for all other incidents involving failure of or damage to fixed OCS facilities.

2. Conduct Of Investigations. The lead agency for an investigation shall conduct, review, approve, and release its investigative report in accordance with its normal procedures; comments by the supporting agency will be included in the investigative report. If both agencies participate in an investigation, the lead agency shall forward an information copy of its final report to the supporting agency. Reports prepared by a single agency need not be forwarded routinely to the other, but shall be available upon request.

## **D. Relations With The Occupational Safety And Health Administration (OSHA).**

An MOU between the Coast Guard and OSHA, dated 19 December 1979, provides for cooperation between the two agencies in identifying violations of safety and health regulations that have caused, or may cause injuries or deaths during activities conducted pursuant to the OCSLAA. Specifically, Paragraph IV.A.2 provides that the Coast Guard will review allegations from any person of violations of

health or safety regulations or other unsafe working conditions. (See Volume X of this manual for a copy of this MOU.)

1. Investigative Activities. In the course of OCS investigations, whether formal or informal, the Coast Guard will cooperate with OSHA with respect to identifying violations of applicable OSHA regulations related to the casualty or accident. Such cooperation will include the following:

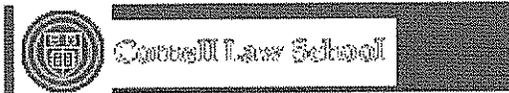
- a. Promptly making investigative information available to OSHA;
- b. Inviting OSHA attendance at Coast Guard formal hearings; and
- c. Developing lines of inquiry suggested by OSHA.

When Coast Guard investigation identifies an apparent violation of OSHA regulations, the OCMI shall promptly notify OSHA and, subsequently, will cooperate with OSHA with respect to any enforcement action that the agency may undertake. Such cooperation may include, but is not limited to, providing transportation as available. [NOTE: OSHA remains responsible for obtaining its own legal rights of access to any facility.]

2. Coast Guard Review Of Alleged Violations. The Coast Guard will review any allegation of a violation of OSHA regulations or the existence of unsafe working conditions on the OCS, and will take appropriate action under the circumstances. Copies of complaints or allegations received by OSHA will be referred to the appropriate Coast Guard district commander for resolution. The Coast Guard shall notify OSHA as promptly as possible of the disposition of allegations forwarded by OSHA.

3. Resolution Of Complaints From Merchant Mariners. In an MOU dated

8 March 1983, OSHA concluded that it may not enforce the Occupational Safety and Health Act with respect to the working conditions aboard Coast Guard inspected vessels (see Volume X of this manual for a copy of the MOU). OSHA retains its authority under Section 11(c) of the Act, which forbids discrimination in any manner against employees who have exercised any right afforded them under the Act. OSHA agreed to refer to the Coast Guard any complaints (except for Section 11(c) complaints) received from mariners working aboard inspected vessels. The Coast Guard has the sole discretion to determine whether the events complained of constitute hazardous conditions, as well as the extent of any remedial actions.



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## Supreme Court collection

**CHAO V. MALLARD BAY DRILLING, INC. (00-927)** 534 U.S. 235 (2002)

**212 F.3d 898, reversed.**

Syllabus	Opinion [ Stevens ]
<a href="#">HTML version</a> <a href="#">PDF version</a>	<a href="#">HTML version</a> <a href="#">PDF version</a>

### Opinion of the Court

*NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.*

## SUPREME COURT OF THE UNITED STATES

No. 00–927

ELAINE L. CHAO, SECRETARY OF LABOR, PETITIONER  
v. MALLARD BAY DRILLING, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[January 9, 2002]

Justice Stevens delivered the opinion of the Court.

Respondent operates a fleet of barges used for oil and gas exploration. On April 9, 1997, one of those barges, “Rig 52,” was towed to a location in the territorial waters of Louisiana, where it drilled a well over two miles deep. On June 16, 1997, when the crew had nearly completed drilling, an explosion occurred, killing four members of the crew and injuring two others. Under United States Coast Guard (Coast Guard or Guard) regulations, the incident qualified as a “marine casualty” because it involved a commercial vessel operating “upon the navigable waters of the United States.” 46 CFR § 4.03–1 (2000).

Pursuant to its statutory authority, the Coast Guard conducted an investigation of the casualty. See 46 U.S.C. § 6101–6104, 6301–6308 (1994 ed. and Supp. V).<sup>1</sup> The resulting report was limited in scope to what the Guard described as “purely vessel issues,” and noted that the Guard “does not regulate mineral drilling operations in state waters, and does not

have the expertise to adequately analyze all issues relating to the failure of an oil/natural gas well." App. to Pet. for Cert. 24a. The Guard determined that natural gas had leaked from the well, spread throughout the barge, and was likely ignited by sparks in the pump room. The report made factual findings concerning the crew's actions, but did not accuse respondent of violating any Coast Guard regulations. Indeed, the report noted the limits of the Guard's regulation of vessels such as Rig 52: The report explained that, although Rig 52 held a Coast Guard Certificate of Documentation, it had "never been inspected by the Coast Guard and is not required to hold a Certificate of Inspection or be inspected by the Coast Guard." *Id.*, at 27a. In Coast Guard terminology, Rig 52 was an "uninspected vessel," see 46 U.S.C. § 2101(43), as opposed to one of the 14 varieties of "inspected vessels" subject to comprehensive Coast Guard regulation, see 46 U.S.C. § 3301 (1994 ed. and Supp. V).

Based largely on information obtained from the Coast Guard concerning this incident, the Occupational Safety and Health Administration (OSHA) cited respondent for three violations of the Occupational Safety and Health Act of 1970 (OSH Act or Act), 84 Stat. 1590, as amended, 29 U.S.C. § 651 et seq. (1994 ed. and Supp. V), and the Act's implementing regulations. The citations alleged that respondent failed promptly to evacuate employees on board the drilling rig; failed to develop and implement an emergency response plan to handle anticipated emergencies; and failed to train employees in emergency response. No. 97-1973, 1998 WL 917067, \*1 (OSHR, Dec. 28, 1998). Respondent did not deny the charges, but challenged OSHA's jurisdiction to issue the citations on two grounds: that Rig 52 was not a "workplace" within the meaning of §4(a) of the Act;<sup>2</sup> and that §4(b)(1) of the Act pre-empted OSHA jurisdiction because the Coast Guard had exclusive authority to prescribe and enforce standards concerning occupational safety and health on vessels in navigable waters.<sup>3</sup>

The Administrative Law Judge (ALJ) rejected both jurisdictional challenges. Finding that respondent's "employees were not performing navigational-related activities" and that Rig 52 "was stationary and within the territorial boundaries of the State of Louisiana," he concluded that Rig 52 was a "workplace" within the meaning of the Act. *Id.*, at \*3. The ALJ then held that the Coast Guard had not pre-empted OSHA's jurisdiction under §4(b)(1), explaining that respondent had identified no basis for an "industry-wide exemption from OSHA regulations" for uninspected vessels, and had failed to identify any Coast Guard regulation "specifically regulat[ing]" the subject matter of the citations. *Id.*, at \*4. In the ALJ's view, another federal agency cannot pre-empt OSHA's jurisdiction under §4(b)(1) unless that agency *exercises* its statutory authority to regulate a particular working condition: Mere possession of the power to regulate is not enough.<sup>4</sup> The Occupational Safety and Health Review Commission declined review of the ALJ's decision and issued a final order assessing a penalty against respondent of \$4,410 per citation. *Id.*, at \*1.

Without reaching the question whether Rig 52 was a "workplace" under §4(a) of the OSH Act, the United States Court of Appeals for the Fifth Circuit reversed. It held that the Coast Guard "has exclusive jurisdiction over the regulation of working conditions of seaman aboard vessels such as [Rig 52], thus precluding OSHA's regulation under Section 4(b)(1) of the OSH Act." 212 F.3d 898, 900 (2000). The Court of Appeals determined that this pre-emption encompassed uninspected vessels such as Rig 52, as well as inspected ones, explaining that the Coast Guard "has in fact exercised" its "authority to issue safety regulations for uninspected vessels"-as §4(b)(1) requires for pre-emption. *Id.*, at 901 (stating, with respect to uninspected vessels, that the Coast Guard has issued regulations concerning "life preservers and other lifesaving equipment; emergency alerting and locating equipment; fire extinguishing equipment; backfire flame control; ventilation of tanks and engine spaces; cooking, heating, and lighting systems; safety orientation and emergency instructions; action required after an accident; and signaling lights"). However, the court conceded that "[b]ecause a drilling barge is not self-propelled, some of these regulations, by their nature, do not apply to [Rig 52]." *Id.*, at 901, n. 6.

Because other Courts of Appeals have construed the pre-emptive force of §4(b)(1) more narrowly than did the Fifth Circuit, akin to the interpretation adopted by the ALJ in this case,<sup>5</sup> we granted certiorari to resolve the conflict. 531 U.S. 1143 (2001). We reverse, as the statute requires us to do.

The OSH Act imposes on covered employers a duty to provide working conditions that "are

free from recognized hazards that are causing or are likely to cause death or serious bodily harm” to their employees, as well as an obligation to comply with safety standards promulgated by the Secretary of Labor. 29 U.S.C. § 654(a)(1), (2).<sup>6</sup> The coverage of the Act does not, however, extend to working conditions that are regulated by other federal agencies. To avoid overlapping regulation, §4(b)(1) of the Act, as codified in 29 U.S.C. § 653(b)(1), provides:

“Nothing in this [Act] shall apply to working conditions of employees with respect to which other Federal agencies ... *exercise* statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.” (Emphasis added).

Congress’ use of the word “exercise” makes clear that, contrary to respondent’s position, see, e.g., Tr. of Oral Arg. 39, mere possession by another federal agency of unexercised authority to regulate certain working conditions is insufficient to displace OSHA’s jurisdiction. Furthermore, another federal agency’s minimal exercise of some authority over certain conditions on vessels such as Rig 52 does not result in complete pre-emption of OSHA jurisdiction, because the statute also makes clear that OSHA is only pre-empted if the working conditions at issue are the particular ones “with respect to which” another federal agency has regulated, and if such regulations “affect occupational safety or health.” §653(b)(1).<sup>7</sup> To determine whether Coast Guard regulations have pre-empted OSHA’s jurisdiction over the working conditions on Rig 52, it is thus necessary to examine the contours of the Guard’s exercise of its statutory authority, not merely the existence of such authority.

Congress has assigned a broad and important mission to the Coast Guard. Its governing statute provides, in part:

“The Coast Guard . . . shall administer laws and promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States covering all matters not specifically delegated by law to some other executive department . . .” 14 U.S.C. § 2 (2000 ed.).

Under this provision, the Guard possesses authority to promulgate and enforce regulations promoting the safety of vessels anchored in state navigable waters, such as Rig 52. As mentioned above, however, in defining the Coast Guard’s regulatory authority, Congress has divided the universe of vessels into two broad classes: “inspected vessels” and “uninspected vessels.” In 46 U.S.C. § 3301 (1994 ed. and Supp. V), Congress has listed 14 types of vessels that are “subject to inspection” by the Guard pursuant to a substantial body of rules mandated by Congress.<sup>8</sup> In contrast, 46 U.S.C. § 2101(43) defines an “uninspected vessel” as “a vessel not subject to inspection under section 3301 ... that is not a recreational vessel.”

The parties do not dispute that OSHA’s regulations have been pre-empted with respect to *inspected* vessels, because the Coast Guard has broad statutory authority to regulate the occupational health and safety of workers aboard inspected vessels, 46 U.S.C. § 3306 (1994 ed. and Supp. V), and it has exercised that authority. Indeed, the Coast Guard and OSHA signed a “Memorandum of Understanding” (MOU) on March 17, 1983, evidencing their agreement that, as a result of the Guard’s exercise of comprehensive authority over inspected vessels, OSHA “may not enforce the OSH Act with respect to the working conditions of seamen aboard inspected vessels.” 48 Fed. Reg. 11365. The MOU recognizes that the exercise of the Coast Guard’s authority—and hence the displacement of OSHA jurisdiction—extends not only to those working conditions on inspected vessels specifically discussed by Guard regulations, but to all working conditions on inspected vessels, including those “not addressed by the specific regulations.” *Ibid.* Thus, as OSHA recognized in the MOU, another agency may “exercise” its authority within the meaning of §4(b)(1) of the OSH Act either by promulgating specific regulations or by asserting comprehensive regulatory authority over a certain category of vessels.

Uninspected vessels such as Rig 52, however, present an entirely different regulatory situation. Nearly all of the Coast Guard regulations responsible for displacing OSHA’s jurisdiction over inspected vessels, as described in the MOU, do not apply to uninspected vessels like Rig 52. See 46 U.S.C. § 2101(43). Rather, in the context of uninspected vessels,

the Guard's regulatory authority-and exercise thereof-is more limited. With respect to uninspected vessels, the Guard regulates matters related to marine safety, such as fire extinguishers, life preservers, engine flame arrestors, engine ventilation, and emergency locating equipment. See 46 U.S.C. § 4102 (1994 ed. and Supp. V); 46 CFR pts. 24–26 (2000). Because these general marine safety regulations do not address the occupational safety and health concerns faced by inland drilling operations on uninspected vessels, they do not pre-empt OSHA's authority under §4(b)(1) in this case. Indeed, as the Court of Appeals acknowledged, many of these general Guard regulations for uninspected vessels do not even apply to stationary barges like Rig 52. See 212 F.3d, at 901, n. 6.

In addition to issuing these general marine safety regulations, the Guard has exercised its statutory authority to regulate a number of specific working conditions on certain types of uninspected vessels. For example, the Guard regulates drilling operations that take place on the outer continental shelf. See 43 U.S.C. § 1333(a)(1); 33 CFR pt. 142 (2000). And it is true that some of these more specific regulations would, pursuant to §4(b)(1), pre-empt OSHA regulations covering those particular working conditions and vessels. But respondent has not identified any specific Coast Guard regulations that address the types of risk and vessel at issue in this case: namely, dangers from oil-drilling operations on uninspected barges in inland waters. Simply because the Guard has engaged in a limited exercise of its authority to address certain working conditions pertaining to certain classes of uninspected vessels does not mean that *all* OSHA regulation of *all* uninspected vessels has been pre-empted. See 29 U.S.C. § 653(b)(1) (pre-emption only extends to working conditions "*with respect to which*" other federal agencies have exercised their authority (emphasis added)). Because the Guard has neither affirmatively regulated the working conditions at issue in this case, nor asserted comprehensive regulatory jurisdiction over working conditions on uninspected vessels, the Guard has not "exercise[d]" its authority under §4(b)(1).<sup>2</sup>

We think it equally clear that Rig 52 was a "workplace" as that term is defined in §4(a) of the Act. The vessel was located within the geographic area described in the definition: "a State," 29 U.S.C. § 653(a), namely Louisiana. Nothing in the text of §4(a) attaches any significance to the fact that the barge was anchored in navigable waters. Rather, the other geographic areas described in §4(a) support a reading of that provision that includes a State's navigable waters: for example, §4(a) covers the Outer Continental Shelf, and sensibly extends to drilling operations attached thereto. Cf. 43 U.S.C. § 1333(a)(1).

Accordingly, the judgment of the Court of Appeals is reversed.

It is so ordered.

Justice Scalia took no part in the decision of this case.

## Notes

<sup>1</sup> Unless otherwise noted, all United States Code references in this opinion are to the 1994 edition.

<sup>2</sup> Section 4(a) of the Act, as codified in 29 U.S.C. § 653(a), provides in part: "This chapter shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Lake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone" (citation omitted).

<sup>3</sup> Section 4(b)(1) of the Act, as codified in 29 U.S.C. § 653(b)(1), provides: "Nothing in this chapter shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under [§274 of the Atomic Energy Act of 1954], exercise statutory authority to prescribe or enforce standards or regulations affecting occupational

safety and health.”

<sup>4</sup> According to the ALJ: “The term ‘exercise,’ as used in §4(b)(1), requires an actual assertion of regulatory authority as opposed to a mere possession of authority. OSHA jurisdiction will be preempted only as to those working conditions actually covered by the agency regulations. ... The OSHA citation alleges that [respondent] failed to evacuate employees and failed to have an emergency response plan. [Respondent] does not argue or identify any similar requirement enforced by the U.S. Coast Guard.” No. 97–1973, 1998 WL 917067, \*3–4 (OSHRC Dec. 28, 1998).

<sup>5</sup> See *Herman v. Tidewater Pacific, Inc.*, 160 F.3d 1239 (CA9 1998); *In re Inspection of Norfolk Dredging Co.*, 783 F.2d 1526 (CA11 1986); *Donovan v. Red Star Marine Services, Inc.*, 739 F.2d 774 (CA2 1984).

<sup>6</sup> The Secretary of Labor has delegated her authority under the Act to the Assistant Secretary for Occupational Safety and Health, who heads OSHA. See 65 Fed. Reg. 50017 (2000).

<sup>7</sup> The Circuits have recognized at least two approaches for defining “working conditions” under §4(b)(1). A “hazard-based” approach, which the Secretary of Labor endorses, focuses on “the particular physical and environmental hazards encountered by an employee” on the job. Brief for Petitioner 24; see, e.g., *Donovan v. Red Star Marine Services, Inc.*, 739 F.2d 774, 779–780 (CA2 1984). In contrast, an “area-based” approach defines “working conditions” as the “area in which an employee customarily goes about his daily tasks.” *Southern R. Co. v. Occupational Safety and Health Review Comm’n*, 539 F.2d 335, 339 (CA4 1976). We need not choose between these interpretations, however, because the Coast Guard did not regulate the “working conditions” at issue in this case under either definition of the term.

<sup>8</sup> “The following categories of vessels are subject to inspection under this part: (1) freight vessels. (2) nautical school vessels. (3) offshore supply vessels. (4) passenger vessels. (5) sailing school vessels. (6) seagoing barges. (7) seagoing motor vessels. (8) small passenger vessels. (9) steam vessels. (10) tank vessels. (11) fish processing vessels. (12) fish tender vessels. (13) Great Lakes barges. (14) oil spill response vessels.”

<sup>9</sup> The statutory provisions themselves resolve this case, because the Coast Guard has not “exercise[d]” authority under §4(b)(1) with respect to the working conditions at issue here. It is worth noting, however, that this interpretation of §4(b)(1)’s pre-emptive scope comports with the OSH Act’s fundamental purpose: “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.” 29 U.S.C. § 651(b). As respondent declared at oral argument, its interpretation of §4(b)(1) would mean that if the Coast Guard regulated marine toilets on Rig 52 and nothing more, any OSHA regulation of the vessel would be pre-empted. Tr. of Oral Arg. 20. Such large gaps in the regulation of occupational health and safety would be plainly inconsistent with the purpose of the OSH Act.



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## Supreme Court collection

**CHAO V. MALLARD BAY DRILLING, INC. (00-927)** 534 U.S. 235 (2002)

**212 F.3d 898, reversed.**

Syllabus	Opinion [ Stevens ]
<a href="#">HTML version</a> <a href="#">PDF version</a>	<a href="#">HTML version</a> <a href="#">PDF version</a>

### Syllabus

*NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued.*

*The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.*

*See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337.*

## SUPREME COURT OF THE UNITED STATES

CHAO, SECRETARY OF LABOR v. MALLARD BAY DRILLING, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 00—927. Argued October 31, 2001—Decided January 9, 2002

While Rig 52, respondent's oil and gas exploration barge, was drilling a well in Louisiana's territorial waters, an explosion on board killed or injured several workers. Pursuant to its statutory authority, the United States Coast Guard (Coast Guard or Guard) investigated the incident, but did not accuse respondent of violating any of its regulations. Indeed, the Guard noted that the barge was an "uninspected vessel," see 46 U.S.C. § 2101(43), as opposed to an "inspected vessel" subject to comprehensive Coast Guard regulation, see §3301. Subsequently, the Occupational Safety and Health Administration (OSHA) cited respondent for violations of the Occupational Safety and Health Act of 1970 (OSH Act or Act) and its regulations. Respondent challenged OSHA's jurisdiction to issue the citations on the grounds that Rig 52 was not a "workplace" under §4(a) of the Act and that §4(b)(1) of the Act pre-empted OSHA jurisdiction because the Coast Guard had exclusive authority to prescribe and enforce occupational safety and health standards on vessels such as Rig 52. In rejecting both challenges, the Administrative Law Judge (ALJ) found that Rig 52 was a "workplace" under the Act and held that the Coast Guard had not pre-empted OSHA's jurisdiction, explaining that there was no industry-wide exemption from OSHA regulations for uninspected vessels and no Coast Guard regulation specifically regulating the citations' subject matter. The Occupational Safety and Health Review Commission issued a final order assessing a penalty against respondent. Without addressing the §4(a) issue, the Fifth Circuit reversed, holding that the Coast Guard's exclusive jurisdiction over the regulation of seamen's working

conditions aboard vessels such as Rig 52 precluded OSHA's regulation under §4(b)(1), and that this pre-emption encompassed both inspected and uninspected vessels.

Held:

1. Because the Guard has neither affirmatively regulated the working conditions at issue, nor asserted comprehensive regulatory jurisdiction over working conditions on uninspected vessels, it has not exercised its authority under §4(b)(1). The OSH Act does not apply to working conditions as to which other federal agencies "exercise" statutory authority to prescribe or enforce occupational safety and health standards or regulations. §4(b)(1), 29 U.S.C. § 653(b)(1). Congress' use of "exercise" makes clear that mere possession by another federal agency of unexercised authority is insufficient to displace OSHA's jurisdiction. Furthermore, another federal agency's minimal exercise of some authority over certain vessel conditions does not result in complete pre-emption of OSHA jurisdiction. To determine whether Coast Guard regulations have pre-empted jurisdiction over Rig 52's working conditions, it is thus necessary to examine the contours of the Guard's exercise of its statutory authority. With respect to *inspected* vessels, the parties do not dispute that OSHA's regulations have been pre-empted because the Coast Guard has exercised its broad statutory authority over workers' occupational health and safety, 46 U.S.C. § 3306. Indeed, OSHA and the Coast Guard signed a Memorandum of Understanding recognizing that the Guard has displaced OSHA's jurisdiction over all working conditions on inspected vessels, including those not addressed by specific regulations. In contrast, the Guard's regulatory authority over uninspected vessels is more limited. Its general maritime regulations do not address the occupational safety and health concerns faced by inland drilling operations on such vessels and, thus, do not pre-empt OSHA's authority in this case. And, although the Guard has engaged in a limited exercise of its authority to regulate specific working conditions on certain types of uninspected vessels, respondent has not identified any specific regulations addressing the types of risk and vessel at issue here. Pp. 59.

2. Rig 52 was a "workplace" under §4(a) of the Act. It was located within a geographic area described in §4(a)-a State-and §4(a) attaches no significance to the fact that it was anchored in navigable waters. Pp. 9-10.

**212 F.3d 898, reversed.**

*Stevens, J., delivered the opinion of the Court, in which all Members joined, except Scalia, J., who took no part in the decision of the case.*